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UNITED STATES OF AMERICA

An appeal to President Clinton, Vice-President Gore and Governor Bush of Texas to condemn one illegal execution and to stop another

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On 15 January 2000 in the Democratic Republic of Congo (DRC), a 14-year-old child called Kasongo was executed by firing squad shortly after his trial for murder. There is no question that his killing violated international law and commonly held standards of justice and decency.

Amnesty International is calling upon the three US leaders named above to publicly condemn the execution of Kasongo, of which the organization only recently learned. They may find it awkward to do so, however, for they allow the same violation of international law to occur in their own country.

Recognizing the immaturity of young people and their capacity for change and rehabilitation, numerous international treaties and standards forbid the use of the death penalty against child offenders - those convicted of crimes committed when they were under 18 years old. It is a ban that commands such widespread respect throughout the world that it has become a principle of customary international law, binding on all countries regardless of which international instruments they have or have not ratified, and regardless of any attempts to exclude themselves from this worldwide prohibition.¹

The USA leads a tiny number of countries, six or fewer, which flout the ban. Indeed, in the same week that Kasongo was shot in Kinshasa, two US prisoners, Chris Thomas and Steve Roach, were executed in Virginia for crimes committed when they were children. Ten days after Kasongo was executed, Glen McGinnis was put to death in Texas for a murder committed when he was 17. Four executions of child offenders in the world in the 21st century; three of them in a country which claims to be a bastion of human rights.

The USA's standing as the world leader in this shameful practice is clear. Since 1993 there have been 16 known executions of child offenders in six countries: one each in the DRC, Nigeria, Iran, Pakistan and Yemen (the latter has now outlawed such executions, as did China in 1997), and 11 in the USA. US executioners have carried out seven of the nine such executions reported since late 1997.

Now another is imminent. On 22 June, Gary Graham (also known as Shaka Sankofa) is scheduled to be killed in Texas for a murder committed when he was a 17-year-old.

¹ The USA claims to have the right to execute child offenders through a reservation it attached to its ratification of the International Covenant on Civil and Political Rights (ICCPR), even though the treaty itself forbids any such derogation. The Human Rights Committee, which oversees countries' compliance with the ICCPR, has said that the US reservation is void as it defeats the object and purpose of the treaty. On 26 April 2000, the UN Commission on Human Rights adopted a resolution urging the withdrawal of such reservations.

Kasongo was a child soldier, tried before a military court and executed 30 minutes later. Surely this is incomparable to Gary Graham's situation? Granted an appeal process Kasongo was so brutally denied, Gary Graham is now 36 years old, having lived for nearly two decades since his conviction -- under the cruelty of a death sentence -- compared to Kasongo's half hour. Perhaps the fact that it is a grown man who will be strapped down and killed in Texas on 22 June is easier for society to stomach than the execution of an actual child. Yet Graham and Kasongo are the victims of the same internationally illegal punishment.

The proceedings used to convict and sentence Kasongo were unquestionably and fundamentally unfair, compounding but not altering the underlying violation of international law relating to his age. But Graham's trial did not meet international minimum standards either. This African American teenager, tried for the murder of a white man before a jury of 11 whites and one black, was represented by lawyers too busy to defend a client they assumed was guilty because of other crimes he had committed. As the defence investigator said later: "We just did not have the time to worry about a guilty client... it may sound unfair but that's the way it was."

Their failure meant that Gary Graham was convicted on the testimony of a single eyewitness whose credibility they never scrutinized. They failed to question suggestive police techniques used in obtaining her identification of Graham. They neglected to interview other, better-placed, witnesses, none of whom have identified him as the gunman. No physical evidence linked Gary Graham to the shooting. The jury never heard forensic evidence that a gun found on him at the time of his arrest could not have fired the fatal bullet. No hearing has ever been held into whether Graham's 19-year claim of innocence is supported by such evidence.

The fallibility of US capital justice has become abundantly clear. Governor Ryan has recognized this in Illinois and stopped all executions there. On 7 June Governor Glendening of Maryland stopped the execution of Eugene Colvin-El because "it is not appropriate to proceed with an execution when there is any level of uncertainty, as the death penalty is final and irreversible." It is now up to Governor Bush of Texas and his appointees on the state parole board to recognize the uncertainty that runs through the case of Gary Graham.

But this is not just a Texan affair. The federal authorities are also obliged to act to prevent this violation of international law. As the US Government recently affirmed, the Vienna Convention on the Law of Treaties does not allow it to hide behind a federal system of government in excusing any failure to fulfill the country's international obligations.²

Elected leaders may be more concerned about domestic opinion than international opprobrium. Appeals from abroad, public demonstrations outside embassies, or isolation in intergovernmental fora may be easier to shrug off than the fear of losing votes at home. And it is not as if those who allow the execution of child offenders need concern themselves with the prospect of facing international arrest warrants as other human rights violators do. But respect for universal human rights standards should not depend on electoral politics or reluctant partners being dragged into honouring international agreements. It relies on leaders appealing to the better side of humanity.

² On 11 May in Geneva, responding to a question from the UN Committee Against Torture, US Assistant Secretary of State Harold Koh said: "We entirely agree with the Committee's restatement of this basic principle of treaty law."

Amnesty International calls upon President Clinton, Vice-President Gore and Governor Bush to publicly condemn the execution of Kasongo and to do all in their power to stop the execution of Gary Graham (Shaka Sankofa).